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SERVICE DATE – JANUARY 26, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 625X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN PRESTON COUNTY, WV

Decided: January 25, 2006

By decision and notice of interim trail use or abandonment (NITU) served on April 9, 2004 (April 2004 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by CSX Transportation, Inc. (CSXT) of a 14.3-mile line of railroad extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 14.3 near Albright in Preston County, WV, subject to trail use, public use, environmental, and standard employee protective conditions.

The April 2004 decision authorized Friends of the Cheat (Friends) to negotiate with CSXT for interim trail use/rail banking until October 6, 2004, for the 14.3-mile line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). By decision served on October 13, 2004, the NITU negotiating period was extended until April 6, 2005, and the time for CSXT to file its notice of consummation was extended until June 6, 2005. After the extension of the NITU negotiating period, CSXT and Friends could not reach an agreement. CSXT subsequently submitted a notice of consummation to the Board on June 3, 2005.

By letter filed on October 12, 2005 (October 12 filing), CSXT stated that it had inadvertently sent the notice of consummation in this proceeding to the Board before complying with all of the conditions imposed in the April 2004 decision. CSXT pointed out that the remaining unsatisfied condition imposed in the April 2004 decision required CSXT to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). The condition was imposed because the West Virginia Division of Culture and History (SHPO) had determined that the rail line may be eligible for the National Register of Historic Places, and that the removal of track materials may constitute an adverse effect on this historic resource. In the October 12 filing, CSXT requested that the Board allow it to retract the consummation letter so that CSXT properly could comply with the historic preservation condition, and asked that the Board indicate that the abandonment had not been consummated. By decision served on October 28, 2005, CSXT's request to retract the consummation letter was granted, and it was ordered that the line remained subject to the Board's jurisdiction.

On November 21, 2005, Friends submitted a request for a 180-day extension of the NITU negotiating period for a 9.78-mile portion of the line extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 9.78 at Camp Dawson, in Preston County, WV. By decision served on December 8, 2005, Friends' request to extend the NITU negotiating period for this 9.78-mile portion of the line until May 27, 2006, was granted.

On January 9, 2006, the Board's Section of Environmental Analysis (SEA) sent to the Advisory Council on Historic Preservation (ACHP) a letter with a copy of a Memorandum of Agreement (MOA) executed by the Board, CSXT, and the SHPO. The MOA was negotiated to comply with the section 106 process to mitigate potential harm to historic resources. SEA states that the filing of the MOA with the ACHP completes the Board's compliance responsibilities under section 106 of the NHPA. Therefore, SEA recommends that the section 106 historic preservation condition imposed in the April 2004 decision be removed.

Accordingly, the proceeding will be reopened and the previously imposed section 106 historic preservation condition will be removed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the section 106 historic preservation condition imposed in the April 2004 decision is removed.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary